

## MALAYSIA (Tier 3\*)

Malaysia is a destination and, to a lesser extent, a source and transit country for men, women, and children subjected to forced labor and women and children subjected to sex trafficking. The overwhelming majority of trafficking victims are among the estimated two million documented and two million or more undocumented foreign workers in Malaysia. Foreign workers typically migrate willingly to Malaysia from other countries in Asia—primarily Indonesia, Bangladesh, the Philippines, Nepal, Burma, Cambodia, Vietnam, India, Thailand, and Laos—in search of greater economic opportunities. Some of the migrants subsequently encounter forced labor or debt bondage at the hands of their employers, employment agents, or informal labor recruiters. Many Malaysian recruitment companies, known as “outsourcing companies,” recruit workers from foreign countries. Contractor-based labor arrangements of this type—in which the worker may technically be employed by the recruiting company—create vulnerabilities for workers whose day-to-day employers generally are without legal responsibility for exploitative practices. In some cases, foreign workers’ vulnerability to exploitation is heightened when employers neglect to obtain proper documentation for workers or employ workers in sectors other than that for which they were granted an employment visa. In addition, a complex system of recruitment and contracting fees, often deducted from workers’ wages, makes workers vulnerable to debt bondage. A Malaysian government policy implemented in January 2013 that places the burden of paying immigration and employment authorization fees on foreign workers, rather than the employers, increased this risk.

A significant number of young foreign women are recruited ostensibly for legal work in Malaysian restaurants, hotels, and beauty salons, but are subsequently coerced into the commercial sex trade. Some Vietnamese women and girls enter into brokered marriages in Malaysia and are subsequently forced into prostitution. NGOs report Ugandan, Somali, and Ethiopian women are fraudulently recruited to Malaysia for ostensibly legitimate work, but subsequently forced into prostitution. Victims from Nigeria and Rwanda have also been identified. Malaysian authorities report that large organized crime syndicates are responsible for some instances of trafficking.

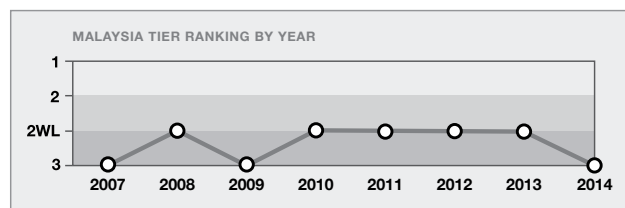
Many migrant workers on agricultural plantations, at construction sites, in textile factories, and in homes as domestic workers throughout Malaysia are exploited and subjected to practices indicative of forced labor, such as restrictions on movement, deceit and fraud in wages, passport confiscation, and imposition of significant debts by recruitment agents or employers. Some victims of forced labor in Malaysian waters, including Cambodian and Burmese men on Thai fishing boats, reportedly escape in Malaysian territory. NGOs have reported allegations that workers on palm oil plantations are subjected to forced labor. Passport confiscation and contract violations remain widespread, particularly among Malaysia’s estimated 380,000 foreign domestic workers. Some Malaysian employers reportedly withheld three to nine months’ wages from foreign domestic workers in order to recoup recruitment agency fees and other debt bonds. The Government of Cambodia officially prohibits its nationals from traveling to Malaysia for domestic work; however, some women continue to enter the country using tourist visas to engage in domestic work, and some who arrived prior to the imposition of the ban have been subjected to domestic servitude. Indonesian victims may transit through Malaysia *en route* to Middle Eastern countries—to circumvent

anti-trafficking protections put in place by the Indonesian government—where they become victims of domestic servitude.

Refugees in Malaysia lack formal status or the ability to obtain work permits under Malaysian law, making them vulnerable to trafficking. Many incur large smuggling debts; traffickers use these debts to subject some refugees to debt bondage. UNHCR estimates 80,000 Filipino Muslims without legal status, including 10,000 children, reside in Sabah. Some children from refugee communities are reportedly subjected to forced begging. Stateless persons in Sabah—some of whom are unaccompanied children of Filipino and Indonesian migrant workers who have been deported—as well as refugees in this region are vulnerable to forced child labor and debt bondage. A small number of Malaysian citizens are subjected to trafficking internally and have been subjected to trafficking in Australia, China, France, Japan, Singapore, Solomon Islands, South Africa, and the United Kingdom for commercial sexual exploitation. One NGO observed an increase in the number of Malaysian women who were subjected to sex trafficking overseas during the year.

The Government of Malaysia does not fully comply with the minimum standards for the elimination of trafficking. In the 2012 and 2013 *Trafficking in Persons Reports*, Malaysia was granted consecutive waivers from an otherwise required downgrade to Tier 3 on the basis of a written plan to bring itself into compliance with the minimum standards for the elimination of trafficking. The Trafficking Victims Protection Authorization Act (TVPA) authorizes a maximum of two consecutive waivers. A waiver is no longer available to Malaysia, which is therefore deemed not to be making significant efforts to comply with the minimum standards and is placed on Tier 3.

During the reporting period, the government made limited efforts to improve its flawed victim protection regime. Malaysian authorities continued to detain trafficking victims in government facilities for periods of time that sometimes exceeded a year; victims had limited freedom of movement and were not allowed to work outside the facilities. The government provided minimal basic services to those staying in its shelters; NGOs—with no financial support from the government—provided the majority of rehabilitation and counseling services. During the reporting period, the government identified two NGOs to operate a new shelter for trafficking victims and allocated funds to support the shelter, but the shelter had not opened by the end of the reporting period; authorities reported the shelter will be operational later in 2014. The government identified 650 potential victims in 2013—significantly fewer than the 1,096 potential victims identified in 2012. It reported fewer investigations (89 compared to 190) and fewer convictions (nine compared to 21) compared to the previous year. Prosecutors reported little interaction with law enforcement during the investigation process and were often unfamiliar with victims’ accounts prior to when they appeared as witnesses for the prosecution. In November 2013, the government implemented standard operating procedures for the investigation and prosecution of trafficking offenses. The government announced plans to enable certain foreign labor trafficking victims to seek work while living in shelters; this policy had not taken effect at the end of the reporting period.



### RECOMMENDATIONS FOR MALAYSIA:

Amend the anti-trafficking law and government regulations to allow trafficking victims to travel, work, and reside outside government facilities, including while under protection orders; provide, and refer all victims to, protective services within Malaysia, regardless of the likelihood their cases will go to trial; improve victim identification efforts, including by implementing procedures to identify labor trafficking victims among vulnerable groups, such as migrant workers; establish policies to prevent victims of trafficking from being punished for crimes committed as a result of being trafficked; offer legal alternatives to removal to countries in which victims would face retribution or hardship; increase efforts to investigate and prosecute trafficking offenses and convict and punish traffickers, particularly in cases involving labor trafficking; enforce the law that prohibits employers from confiscating passports; apply stringent criminal penalties to those involved in fraudulent labor recruitment or forced labor; increase efforts to investigate—and prosecute and punish, as appropriate—public officials who may profit from trafficking or who exploit victims; increase training for officials on the effective handling of sex and labor trafficking cases, with a particular emphasis on victim protection and the identification of labor trafficking victims; encourage increased efforts by prosecutors to prepare victims for participation as witnesses in trafficking trials; consider funding specialized NGOs to provide victims in government facilities regular access to legal services and effective counseling in their native languages; make greater efforts to educate migrant workers of their rights, legal recourses available, and remedies against traffickers or employers who fail to meet their legal obligations; and increase transnational cooperation with other governments in the region on enforcing anti-trafficking laws.

### PROSECUTION

The Government of Malaysia decreased anti-trafficking law enforcement efforts, reporting fewer investigations and convictions related to human trafficking in 2013 than 2012. It hired an additional 101 officers to staff Malaysia's anti-trafficking police unit. Malaysia's 2007 Anti-Trafficking in Persons Act (amended) prohibits all forms of human trafficking and prescribes punishments of up to 20 years' imprisonment, penalties that are sufficiently stringent and commensurate with those prescribed for other serious offenses, such as rape. November 2010 amendments to the law broadened the definition of trafficking to include all actions involved in acquiring or maintaining the labor or services of a person through coercion.

The government reported initiating 89 new investigations of trafficking cases in 2013, a decrease from 190 investigations in 2012. The attorney general's office reported initiating prosecutions against 34 defendants for alleged human trafficking offenses; the government initiated 63 prosecutions against an unknown number of defendants in 2012. The government convicted nine traffickers (five for sex trafficking and four for forced labor), a decrease from 21 traffickers (11 for sex trafficking and 10 for forced labor) convicted in 2012. Sentences ranged

from three to 15 years' imprisonment for each trafficking charge and averaged 5.8 years; some traffickers received lengthier sentences because they were convicted on multiple charges. Poor government treatment of victims remained a significant impediment to successful prosecutions. NGOs reported referring cases of alleged labor and sex trafficking to the government, some of which the authorities failed to investigate. NGOs reported that police and Labor Department officials often failed to investigate complaints of confiscation of passports and travel documents or withholding of wages—especially involving domestic workers—as possible trafficking offenses; these front-line officers failed to recognize indicators of trafficking and instead treated these cases as immigration violations.

The Royal Malaysia Police operated a specialized anti-trafficking unit and the government reported hiring an additional 101 officers into the unit in 2013. The government also reported hiring 63 people who will specialize in combatting trafficking in the Immigration Department. The Labor Department employed 13 specialized enforcement officers, but continued to rely on workers to initiate a complaint of non-payment of wages before they would investigate a potential trafficking case. The Attorney General's Chamber had 29 deputy public prosecutors throughout Malaysia specializing in human trafficking cases. Prosecutors reported little interaction with law enforcement during the investigation process and were often unfamiliar with victims' accounts prior to courtroom appearances. In November 2013, the government implemented standard operating procedures for the investigation and prosecution of trafficking offenses. The government's National Anti-Trafficking and Anti-Smuggling of Migrants Council (MAPO) reported that 248 government officials from the Royal Malaysian Police, Malaysian Maritime Enforcement Agency, Immigration Department, and Labor Department received specialized anti-trafficking training in 2013. The government reported several additional anti-trafficking training sessions attended by more than 500 law enforcement officials during the year. The Laos and Chinese governments reported cooperating with Malaysian authorities on trafficking investigations in 2013.

Press reports continued to accuse some immigration officials of facilitating smuggling, including the transportation of trafficking victims. The government did not report any investigations, prosecutions, or convictions of government employees complicit in human trafficking. It did not report information regarding investigations targeting recruitment agencies or other intermediaries who may be involved in trafficking.

### PROTECTION

The government made limited and inadequate efforts to improve its flawed victim protection regime. Malaysian authorities detained trafficking victims in government facilities as part of a court-ordered protection measure; these protection orders lasted 90 days, but could be extended. Most victims stayed in these facilities for three to six months; some were detained for more than a year. The government deported victims to their home countries after their detention ended, in accordance with Malaysian law. Experts regard shelters that prohibit victims from leaving as posing a serious risk for re-traumatizing victims.

In 2013, the government reported identifying 650 potential trafficking victims and, of those, confirmed 270 were victims of trafficking (254 adult females and 16 adult males). This represents a significant decrease from the 1,096 potential victims and 444 certified trafficking victims confined in government

facilities in 2012. The government did not provide data as to whether these were sex or labor trafficking victims. More than half of the victims were Indonesian nationals. The government reported that individual law enforcement agencies followed standardized procedures to identify trafficking victims; however, government officials lacked formal government-wide procedures for the proactive identification of victims among vulnerable groups. Law enforcement officers and prosecutors did not receive adequate specialized training to work with victims, and investigation procedures—such as asking victims to recount their trafficking experience to numerous officials—sometimes did not take into account the best interests of victims.

Under Malaysia's anti-trafficking law, government-identified trafficking victims are required to stay in government-approved shelters. The government operated five facilities to house victims of trafficking. The Ministry of Women, Family, and Community Development operated three facilities for women—one in Kuala Lumpur, one in Johor, and one in Kota Kinabalu, Sabah. This department also operated one shelter for child trafficking victims in Negeri Sembilan, near Kuala Lumpur. The Home Ministry operated Malaysia's only shelter for male trafficking victims in Malacca. The government detained foreign victims in these facilities 24 hours per day, with few exceptions. It did not allow foreign adult victims to leave the facilities without a chaperone—and only then for hospital visits or court appearances under the custody of police. Male victims had limited freedom of movement inside the one facility for men. The government did not allow foreign trafficking victims to work outside the facilities while under the protection order; in past years, the government granted work permits to some trafficking victims after they left the shelter. The government provided some basic services to those staying in its shelters. NGOs—with no financial support from the government—provided the majority of victim rehabilitation and counseling services. At times, the government granted NGOs access to victims in government facilities; however, it prevented some victim assistance organizations from accessing shelters to provide services. One NGO reported improved access to the government-run shelters to provide psychological counseling in 2013. The government did not release detailed budget information on its victim protection efforts, but it reported allocating the equivalent of approximately \$1,221,000 to the Ministry of Home Affairs for anti-trafficking work and \$909,000 for the Women's Ministry in its 2014 budget.

In 2013, the government reported progress on plans for a pilot project to enable two NGOs to operate a government-owned shelter for trafficking victims in 2014. This shelter had not opened at the end of the reporting period. The government had allocated funds to support the shelter, but grants had not yet been extended to the two NGOs. In March 2014, the government announced plans for a new policy to enable certain victims of labor trafficking to have freedom of movement and reside in Malaysia for a maximum of three months while they sought work. The proposed policy, if implemented, would not affect all victims in shelters; only those labor trafficking victims who showed no signs of physical abuse and who had entered Malaysia with a legal employment pass would be granted work and residence permits. The planned policy had not taken effect at the end of the reporting period.

Victims were not allowed to leave the country pending trial proceedings. The government's policy of forcing trafficking victims into facilities discouraged victims from bringing cases to the government's attention or cooperating with authorities. Prosecutors attributed the high acquittal rate of trafficking

cases in part to the lack of victim cooperation. Some foreign embassies sheltered victims directly to expedite their repatriation and protect them from detention in Malaysian facilities during lengthy criminal proceedings. Some NGOs reported that they did not refer victims to the police, as they believed doing so was detrimental to the welfare of the victims. Malaysia's anti-trafficking law provides victims immunity from criminal prosecutions for some crimes as a result of being trafficked; however, victims whose cases did not result in a prosecution generally were not granted a protection order and were transferred to immigration detention facilities for deportation. Victims' certification under a protection order was dependent on their ability to provide testimony in a case that could be prosecuted. Some unidentified victims, particularly those whose documents had been confiscated by employers, continued to be detained, deported, or charged with immigration offenses. NGOs reported that Malaysian authorities released a small number of identified victims to an embassy which had given assurances to the Malaysian government that it would repatriate the victims immediately. However, some of the victims were reportedly required by the embassy to work to earn money to pay for their return home.

## PREVENTION

The Malaysian government improved efforts to prevent human trafficking during the reporting period. MAPO, headed by the Home Ministry, included representation from multiple government entities. The Ministry of Health joined MAPO in 2013 and began providing health screenings to foreign victims in shelters. MAPO continued to meet monthly to coordinate the government's anti-trafficking response. As in previous years, NGOs reported varying degrees of inclusion in the government's anti-trafficking policymaking; some NGOs were formally affiliated with MAPO, and others were not included in policy discussions related to their areas of expertise. NGOs reported that it was difficult to assess the government's progress in implementing Malaysia's 2014-2015 anti-trafficking action plan. The government reported producing 6,078 public service radio announcements and 6,032 public service television announcements to raise awareness of human trafficking during the reporting period—a significant increase from public service efforts during the previous year. It also produced ads in newspapers and pamphlets and on billboards to raise awareness of trafficking issues.

During the year, 1,351 Bangladeshis entered Malaysia to work under a January 2013 memorandum of understanding (MOU) between the Governments of Bangladesh and Malaysia that reinstated a formal labor migration channel between the countries. Existing agreements with Indonesia and the Philippines provided some protections for domestic workers from these countries. In October 2013, the government ceased to allow Indonesians to enter Malaysia and then obtain a "journey performed" work permit; workers and agents had used this type of visa to circumvent Indonesian government regulations governing migration for positions as domestic workers. The government did not finalize an MOU to govern the employment of Cambodian domestic workers in Malaysia, and the Cambodian government's 2011 ban on Cambodian women's travel to Malaysia for domestic work remained in effect. In late 2013, the Thai and Malaysian governments finalized a bilateral MOU to share information to combat human trafficking. A January 2013 government policy placed the burden of paying immigration and employment authorization fees on foreign workers; this increased the risk that workers would become

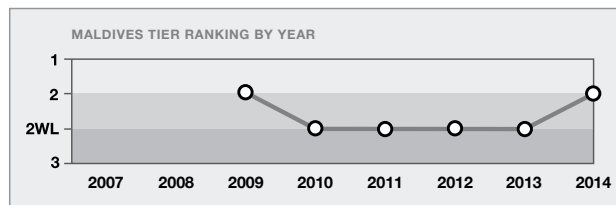


trapped in debts to recruiters or loan sharks, placing them at even greater risk of debt bondage. Domestic workers remained excluded from a number of protections under Malaysian labor law, including the country's recently implemented minimum wage. The government did not take measures to reduce the demand for commercial sex acts. The government provided anti-trafficking training to Malaysian troops prior to their deployment abroad on international peacekeeping missions.

## MALDIVES (Tier 2)

Maldives is a destination country for men, women, and children subjected to forced labor and sex trafficking, and a source country for women and children subjected to labor and sex trafficking. An unknown number of the approximately 200,000 documented and undocumented foreign workers in Maldives—primarily Bangladeshi and Indian men in the construction and service sectors—experience forced labor, including fraudulent recruitment, confiscation of identity and travel documents, withholding or nonpayment of wages, and debt bondage. Migrant workers pay the equivalent of approximately \$1,000 to \$4,000 in recruitment fees to migrate to Maldives, contributing to their risk of debt bondage after arrival. In addition to Bangladeshis and Indians, some migrants from Sri Lanka, Pakistan, and Nepal reportedly experience recruitment fraud before arriving in Maldives. Recruitment agents in source countries collude with employers and agents in Maldives to facilitate fraudulent recruitment and forced labor of migrant workers. A small number of women from Sri Lanka, Thailand, India, China, the Philippines, Eastern Europe, and former Soviet countries, as well as some girls from Bangladesh and Maldives, are subjected to sex trafficking in Maldives. Some Maldivian children are transported to the capital, Malé, from other islands for domestic service; some of these children are also reportedly subjected to sexual abuse and may be victims of forced labor. Maldivian women may be subjected to sex trafficking in Sri Lanka.

The Government of Maldives does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. During the reporting period, the government passed its first anti-trafficking law, opened its first shelter for trafficking victims, distributed pamphlets about rights to migrant workers in a number of other languages, blacklisted some companies for fraudulent recruitment practices, and convicted a trafficker, reportedly the first such conviction in Maldives. However, serious problems in anti-trafficking law enforcement and victim protection remained. The government did not adequately train police and other officials on trafficking, nor did it provide authorities with procedures to identify victims among vulnerable populations and refer those victims to protective services. Consequently, the government penalized some victims for offenses committed as a result of being trafficked and also deported thousands of migrants without adequately screening for indications of forced labor. As in previous years, authorities did not criminally prosecute any labor recruitment agents or firms for fraudulent practices. Passport confiscation was a rampant practice by private employers and government ministries, who withheld the passports of foreign employees and victim witnesses in trafficking prosecutions; the government did not prosecute any employers or officials for this offense.



### RECOMMENDATIONS FOR THE MALDIVES:

Develop guidelines for public officials to proactively identify victims among vulnerable groups, such as undocumented migrants and women in prostitution, and train officials on their use; develop systematic procedures for the referral of victims to care providers and train officials on their use; ensure that victims are not penalized for acts committed as a result of being trafficked; increase efforts to investigate and prosecute suspected trafficking offenses, respecting due process; increase efforts to monitor and punish labor recruitment agents and firms engaging in fraudulent practices; train law enforcement officials on the new anti-trafficking law; continue to offer shelter and specialized services to identified victims; finalize and implement the standard operating procedures for shelter operations and victim services; amend the Prevention of Human Trafficking Act to ensure victims who enter Maldives illegally are offered rehabilitative services if they prefer to remain in the country; enforce prohibitions against passport retention by employers and government agencies; raise public awareness of human trafficking through media campaigns; consider providing legal temporary residency for foreign victims to allow them time to recover and assist with investigations and prosecutions; provide translators to law enforcement and labor authorities to ensure foreign workers are able to participate in inspections, investigations, and prosecutions against their alleged traffickers; improve inter-ministerial coordination on human trafficking issues; and accede to the 2000 UN TIP Protocol.

### PROSECUTION

The Government of Maldives strengthened anti-trafficking law enforcement efforts. In December 2013, the government passed its first anti-trafficking law, the Prevention of Human Trafficking Act, which prohibits many, but not all, forms of sex and labor trafficking under Articles 12, 13, 14, and 16. The law prohibits internal and transnational trafficking but generally requires that the acts of exploitation be predicated on movement, although it also prohibits debt bondage and some forms of child trafficking without requiring movement. It also does not criminalize child sex trafficking in the absence of coercion. Article 13 is also overly broad in certain respects; for example, it includes compelling a person to undergo a medical test after being transported as a form of trafficking in persons. The law prescribes penalties of up to 10 years' imprisonment. These penalties are sufficiently stringent, but are not commensurate with those prescribed for other serious crimes, such as rape.

The government reported investigating one new labor trafficking case in 2013, a decrease from four cases in 2012. Authorities did not initiate any new prosecutions in 2013, compared with two sex trafficking cases in 2012 and no cases in 2011. The government reported its first known trafficking conviction in August 2013; the trafficker had recruited three Thai women to work as massage therapists, but forced them into prostitution upon their arrival. The Maldivian court convicted the trafficker under a Ministry of Justice circular that penalized forced prostitution, making